

FILED

JUN 24 2008

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

TONY BARNES,)	CV 08-81-M-DWM-JCL
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
MISSOULA COUNTY DETENTION FACILITY,)	
AND BYRON JACOBSON,)	
)	
Defendants.)	
_____)	

Plaintiff Barnes, a prisoner at the Missoula County Detention Facility, has filed a Complaint under 42 U.S.C. § 1983. Barnes alleges that he is a Muslim and that his jailers have denied his requests for a no-pork diet, a prayer rug, a kufi and a Qur'an.

United States Magistrate Judge Jeremiah C. Lynch conducted preliminary screening of the Complaint as required by 28 U.S.C. § 1915(e)(2). Under that statute, the court engages in a

preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted.

Judge Lynch determined that the Complaint states a claim and should be served. He recommends dismissal of the Missoula County Detention Facility as a Defendant, because the jail is a building and cannot be sued. Plaintiff Barnes timely objected to Judge Lynch's Findings and Recommendations, preserving his right to de novo review of the record. 28 U.S.C. § 636(b)(1). In his objections Plaintiff Barnes makes clear that by naming the jail as a defendant he intended to sue the "policy makers," or officials who are responsible for the Missoula County Detention Facility's approach to free exercise of religion by inmates. In light of that clarification by the Plaintiff, it is appropriate for the Court to grant leave to amend the Complaint under Fed. R. Civ. P. 15.

Upon de novo review, and having considered the Plaintiff's objections, I adopt Judge Lynch's Findings and Recommendations in full, but will allow the Plaintiff an opportunity to amend his Complaint.

Accordingly, IT IS HEREBY ORDERED that the Complaint against the Missoula County Detention Facility is DISMISSED.

IT IS FURTHER ORDERED that the Plaintiff shall have until July 14, 2008 in which to file an amended complaint articulating his claim against the policy-making officials at the Missoula

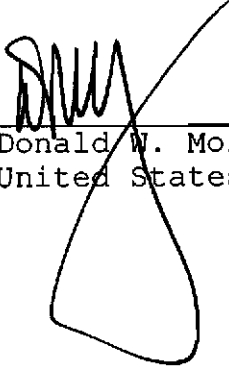
County Detention Facility.

IT IS FURTHER ORDERED that the Defendant shall, on or before the date set for filing of the Answer, file a response to the Plaintiff's motion for a temporary injunction.

The Clerk of Court is directed to forward a copy of this Order to:

Michael W. Sehestedt
Office of the Missoula County Attorney
Missoula County Courthouse
200 W. Broadway
Missoula, MT 59802

DATED this 24th day of June, 2008.



Donald W. Molloy, District Judge
United States District Court